

- Remarks -

This response is pursuant to the formalities letters herein (Attachment 1 and Attachment 2 annexed hereto and incorporated by reference herein) mailed 11/23/04 and 02/18/05, respectively.

Applicant's attorney's files indicate that, contrary to the assertion in the formalities letters, an Abstract of the Disclosure was in fact filed with the application and on January 24, 2005 in applicant's filing in response to the formalities letter mailed 11/23/04 (Attachment 1); however, for purposes of expediting prosecution of this application and out of an abundance of caution, applicant files yet another Abstract of the Disclosure.

Further responding to the formalities letter, enclosed is check in the amount demanded in the formalities letter of 02/18/05, \$654.00, comprising allegedly underpaid statutory filing fee for claims in excess of 20 at the rate of \$25.00 per claim for nine (9) claims less payment previously made (\$144.00), together with the fee for the concurrently-filed petition for Extension of Time pursuant to 37 CFR 1.136(a), for response in the third month (\$510.00).

Applicant notes the following inequities involved in this proceeding, all adding up to the unfair exaction of unfair fees by the PTO resulting from the tardiness and inaction of the PTO in the following manner. (1) The PTO allowed the application to languish unacted-upon from the filing date of 07/03/03 until the date of mailing of the first formalities letter issued 11/23/04 received in this office 12/7/04, a period of over sixteen (16) months. At that time the fees due for filing were stated

to be \$541.00, which fees were duly paid within the two months period for response stated in the formalities letter, thus not requiring a petition for extension of time or the attendant fee therefor.

The PTO was undoubtedly aware on November 23, 2004 that the fee structure was to change drastically upward and at a point in time very close to the date of mailing of the formalities letter and of course even closer to the date of receipt in the office of Applicant's counsel of the formalities letter. The magnitude and unusual timing (12/08/2004, 30 + percent increase in filing fees) caught many applicants by surprise.

In such circumstances, the PTO has previously given a grace period for payment of increased fees and has normally considered payment of prior-demanded fees under the old structure to constitute substantial compliance with a fee demand justifying a resetting of time for compliance under formalities letters.

In this case, however, the second formalities letter received more than one month after timely filing of the prior response did not reset the time but demanded in effect that the Applicant pay for the PTO's dilatory tactics by requiring a petition for extension of time (and very substantially increased fee) for responding to the second formalities letter. This is patently unfair and unreasonable and is reminiscent of the bad old days when the PTO was acting as a generator of income and tax collector for the government on the backs of the creative community rather than providing a fee structure aimed at sustaining itself.

Applicant having complied in all respects through this response and amendment with the requirements stated in the formalities letters, it is respectfully requested that examination of the subject application commence herewith.

Respectfully submitted,
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